BEFORE THE BOARD OF NURSING DEPARTMENT OF LABOR AND INDUSTRY STATE OF MONTANA

In the matter of the proposed NOTICE OF PUBLIC amendment of ARM 8.32.405,) HEARING ON PROPOSED licensure by endorsement,) AMENDMENT AND ADOPTION ARM 8.32.406, licensure for foreign nurses, ARM 8.32.412, inactive status, ARM 8.32.425, fees, ARM 8.32.501, grounds for denial of license, ARM 8.32.502, license probation or reprimand of a licensee, ARM 8.32.1401, definitions, and NEW RULES I - IV regarding licensure of medication aides

TO: All Concerned Persons

- 1. On July 1, 2004, at 10:00 a.m., a public hearing will be held in room 438, of the Park Avenue Building, 301 South Park Avenue, Helena, Montana to consider the proposed amendment and adoption of the above-stated rules.
- 2. The Department of Labor and Industry will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Nursing (Board) no later than 5:00 p.m., June 24, 2004, to advise us of the nature of the accommodation that you need. Please contact Liz Carney, Board of Nursing, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2340; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; e-mail dlibsdnur@state.mt.us.
- 3. GENERAL STATEMENT OF REASONABLE NECESSITY: In the 2003 Legislative Session, the legislature determined that a new category of licensure was necessary to ensure public safety. The 2003 Legislature enacted Chapter 448, Laws of 2003 (House Bill 681), an act providing for the licensure of medication aides in assisted living facilities. The bill was signed by the Governor on April 21, 2003 and became effective on October 1, 2003.

This general statement of reasonable necessity applies to rules 8.32.425, 8.32.1401 and NEW RULES I through IV, which will define the requirements for licensure, the standards, responsibilities and limits of the medication aides' practice, and the training and fees associated with licensure. This new level of licensure will allow assisted living facilities to safely serve their clients in a residential, less restrictive setting without having a nurse present 24 hours a day.

- 4. The rules proposed to be amended provide as follows, stricken matter interlined, new matter underlined:
- 8.32.405 LICENSURE BY ENDORSEMENT (1) and (1)(a) remain the same.
- (b) an official nursing transcript from a board approved program which prepares for the level of licensure being sought. The transcript shall identify the date of graduation and the credential conferred;
- (c) (b) evidence of meeting the standards for nursing education in this state at the time of original licensure;
- (d) evidence of completion of a four year high school course of study or its equivalent;
- (e) (c) verification of initial licensure by examination with evidence of completion of a board approved program;
- (f) (d) verification and documentation of licensure status from jurisdictions of all jurisdictions of licensure employment for preceding two years; and
- (g) (e) professional nurse applicants shall present evidence of having passed a licensure examination as follows:
- (i) a passing score on a state-constructed licensure examination prior to the use of the state board test pool examination in the original state of licensure; ; or
- (ii) 350 on each part of the state board test pool examination for registered nurses, ; or
- (iii) a minimum scaled score of 1600 on a NCLEX-RN (national council licensure examination for registered nurses) examination taken prior to September, 1988, ; or
- (iv) a passing score on a NCLEX-RN examination taken after September, 1988;
- (h) (f) practical nurse applicants shall present evidence of having passed a licensure examination as follows:
- (i) 350 on the state board test pool examination for practical nurses; or
- (ii) a minimum scaled score of 350 on a NCLEX-PN (national council licensure examination for practical nurses) examination taken prior to September, 1988; or
- (iii) a passing score on a NCLEX-PN examination taken after September, 1988; and
- $\frac{(i)}{(g)}$ the required fees for licensure by endorsement as specified in subchapter 11- ; and
- (h) if the applicant's education was obtained in a foreign country, the applicant must also meet the conditions of ARM 8.32.406.
 - (2) through (4) remain the same.

AUTH: <u>31-1-131</u>, 37-8-202, MCA

IMP: 37-1-304, MCA

<u>REASON</u>: The Board finds it necessary to amend this rule at this time because requiring a transcript from a nursing program is not necessary if the applicant is already licensed elsewhere, and the requirement that the other state's license

verification include evidence of completion of a Board approved program is sufficient. Requiring submission of a high school diploma is not necessary because high school graduation or equivalency would be necessary to enter the The Board needs verification of licensure nursing program. from jurisdictions of licensure instead iurisdictions employment because of a nurse may discipline on a license in a jurisdiction, but not be employed in that jurisdiction. Not all state boards of nursing require persons who received their nursing education in a foreign country to complete the Commission on Graduates of Foreign Nursing Schools (CGFNS) process as a condition of licensure, but the Board adopted such a requirement in ARM 8.32.406 to protect the public health, safety and welfare of Montanans. The Board deems it necessary to clarify and affirm that the CGFNS process not only predicts NCLEX success, but it also has foreign transcript review component and an proficiency component which are deemed necessary by the Board for the protection of the health, safety and welfare of the public. Several people who had passed NCLEX and were licensed in another state or U.S. jurisdiction were denied licensure in Montana by endorsement because they received their nursing education in a foreign country and had not completed the CGFNS process, i.e., did not meet the criteria for licensure under ARM 8.32.406. This amendment would clarify and affirm that ARM 8.32.406 applies to both exam and endorsement candidates. The authority citations have been amended to more completely reflect the sources of the Board's rulemaking authority.

- $\underline{\text{8.32.406}}$ LICENSURE FOR FOREIGN NURSES (1) remains the same.
- (2) Candidates for licensure as registered nurses will be required to show evidence of having passed the commission on graduates of foreign nursing schools (CGFNS) screening examination prior to writing the Montana licensing examination, except:
- (a) Canadian educated nurses who graduated after 1966 from a school approved by a Canadian province; and who have also passed the Canadian nurses association testing service CNATS (CNATS) in the English language; ; or
- (b) those applicants who have passed the NCLEX or the state board test pool examination and who have graduated from a college, university or professional training school located in Australia, Ireland, New Zealand, Canada (except Quebec) or the United Kingdom.
 - (3) remains the same.

AUTH: <u>37-1-131</u>, 37-8-202, MCA

IMP: <u>37-8-101</u>, 37-8-406, 37-8-416, MCA

<u>REASON</u>: The Board believes obtaining a nursing education in one of the named English-speaking countries and passing NCLEX or the state board test pool examination, are sufficient indicia of an endorsement applicant's qualifications and

English proficiency to warrant an exception to the CGFNS requirement in (2) of this rule. It is reasonably necessary to clarify the CNATS acronym used in the existing rules, to add the commonly used and widely accepted acronym for the Commission on Graduates of Foreign Nursing Schools (CFGNS), and to supplement the citations to the Board's rulemaking authority and the statutes implemented by this rule as amended. The amendment will have no fiscal impact.

- 8.32.412 INACTIVE STATUS (1) remains the same.
- (2) An individual may not remain licensed on inactive status for longer than three two years without re-establishing qualifications for licensure, including but not limited to, passage of the licensing examination.
- (3) An individual licensed on inactive status may convert his or her license to active status by submission of an appropriate application and payment of the renewal fee for the year in question current renewal period.
 - (4) through (6) remain the same.

AUTH: <u>37-1-131</u>, <u>37-1-319</u>, <u>37-8-202</u>, MCA

IMP: 37-8-431, MCA

It is reasonable and necessary to amend this rule REASON: because in 2002, ARM 8.32.411 was amended to provide for twoyear license renewal cycles. Amending this rule as proposed would make it consistent with ARM 8.32.411 and ensure that all nursing licenses are renewable at the same time. nurses' licenses expire at different times would require more staff or staff time as well as more administrative costs including programming changes to the Department's Oracle Increased costs could in turn necessitate a fee database. The proposed amendment will have no fiscal impact increase. on the Department or on licensees. The Board did consider increasing the allowable inactive status licensure period from three years to four years as an alternative to the proposed amendment. However, the Board determined that, for public safety reasons, four years is too long to remain licensed on inactive status due to the dynamics and continual evolution of nursing practice. The authority citations have been amended to more completely reflect the sources of the Board's rulemaking authority.

- 8.32.425 FEES (1) through (18) remain the same.
- (19) The fee for medication aide initial licensure is \$25.
- (20) The fee for medication aide licensure renewal is \$20 per year.

AUTH: 37-1-319, 37-8-202, MCA

IMP: 37-1-134, 37-8-202, 37-8-431, MCA

<u>REASON</u>: The Board finds it necessary to amend the fee schedule to include medication aides since this is a new

category of licensure. 37-1-134, MCA, requires the board to set fees commensurate with costs.

The Board anticipates 500 licensees in this new category. The Board estimates the approximate cumulative financial impact to be \$45,000 over a two-year period.

- 8.32.501 GROUNDS FOR DENIAL OF A LICENSE (1) A license may be denied for:
- (a) failure to meet requirements or standards established by law or by rules adopted by the board $\frac{1}{7}$:
 - (b) failure to pass the licensing examination-;
- (c) fraud or misrepresentation in association with the examination application, licensure application or licensure examination.;
- (d) conduct which would be grounds for discipline under section 37 8 441 37-1-316, MCA7; or
 - (e) remains the same.

AUTH: <u>37-1-136</u>, 37-8-202, MCA

IMP: 37-1-136, <u>37-1-137</u>, <u>37-1-316</u>, 37-8-441, MCA

8.32.502 LICENSE PROBATION OR REPRIMAND OF A LICENSEE

(1) A licensee may be placed on probation or reprimanded based on grounds specified in $\frac{37-8-441}{37-1-316}$, MCA, or ARM 8.32.413(2).

AUTH: <u>37-1-136</u>, 37-8-202, MCA

IMP: 37-1-136, <u>37-1-137</u>, <u>37-1-316</u>, MCA

REASON: The Board finds it necessary to amend ARM 8.32.501 and 8.32.502 to delete the references to 37-8-441, MCA, and replace them with reference to 37-1-316, MCA. Section 37-8-441, MCA, was repealed in 1995 when the legislature enacted uniform statutes governing occupational and professional licensing boards. The uniform laws were enacted to reduce inconsistencies among the individual boards' rules and to reduce the need for each board to promulgate its own rules on matters of mutual concern and applicability. The authority and implementation citations are amended to more completely reflect the sources of the Board's rulemaking authority and the statutes implemented by this rule as amended.

- <u>8.32.1401 DEFINITIONS</u> As used in this sub-chapter, the following definitions apply:
- (1) "Allowable routes" means oral, sublingual, topical, opthalmic, otic, nasal, and inhalant methods of administration, except as otherwise provided by rule.
- (1) and (2) remain the same, but are renumbered (2) and (3).
- (4) "General supervision", with respect to a medication aide, means at least quarterly on-site review, by a supervising nurse, of a medication aide's medication administration skills and the guidance of a supervising nurse

to include a written plan addressing questions and situations that may arise when the supervising nurse is not available. Such a plan must include access to a health care professional.

- (3) remains the same but is renumbered (5).
- (6) "Medication aide" means an employee of an assisted living facility who, under the general supervision of a Montana licensed nurse, administers PRN and routine medication as defined herein, to residents of the assisted living facility, and who:
 - (a) is 18 years of age or older;
 - (b) has a high school diploma; and
- (c) has successfully passed a board approved medication aide training program and examination.
- (4) through (6) remain the same but are renumbered (7) through (9).
- (10) "PRN medication" ("pro re nata", Latin for "according as circumstances may require") means medication taken as necessary for the specific reason stated in the medication order, together with specific instructions for its use.
- (11) "Routine medication" means medication taken regularly at the same time each day using the same route, or on the same days of the week, at the same time, using the same route.
- (7) and (8) remain the same but are renumbered (12) and (13).

AUTH: 37-1-131, 37-8-202, MCA

IMP: 37-1-131, <u>37-8-101</u>, <u>37-8-102</u>, <u>37-8-202</u>, <u>37-8-422</u>, MCA

<u>REASON</u>: It is reasonable and necessary to amend the implementation citations to accurately reflect the statutes implemented by this rule as amended.

5. The proposed new rules provide as follows:

NEW RULE I PURPOSE OF STANDARDS OF PRACTICE FOR THE LICENSED MEDICATION AIDE (1) The purpose of the standard is to:

- (a) establish minimal acceptable levels of safe and effective practice for the medication aide; and
- (b) serve as a reference for the board to evaluate safe and effective medication aide practice.

AUTH: 37-1-131, 37-8-202, MCA

IMP: 37-8-101, MCA

NEW RULE II STANDARDS RELATED TO THE MEDICATION AIDE'S RESPONSIBILITIES AS A MEMBER OF HEALTH TEAM (1) The medication aide shall:

- (a) practice under the general supervision of a nurse with an unencumbered Montana license;
- (b) practice only in an assisted living facility as defined by 50-5-101, MCA;

- (c) administer only medications that are in:
- (i) a unit dose package; or
- (ii) a pre-filled medication holder;
- (d) administer only PRN and routine medications as defined in ARM 8.32.1401;
- (e) administer medications only by allowable routes as defined in ARM 8.32.1401, except:
- (i) insulin may be subcutaneously injected from a prefilled, labeled, unit dose syringe; and
 - (f) notify the supervising nurse if:
- (i) the patient has a change in medication, and the medication is not available as described in (1)(c); or
- (ii) the medication aide has observed a change in the patient's physical or mental condition.

AUTH: 37-1-131, 37-8-202, MCA IMP: 37-8-202, 37-8-422, MCA

NEW RULE III GENERAL REQUIREMENTS FOR LICENSURE AS MEDICATION AIDE (1) The applicant for licensure may apply to take the Montana medication aide exam if:

- (a) the applicant has completed a board approved medication aide training program as outlined in these rules; or
- (b) the applicant holds an unencumbered certification or license in another state or U.S. jurisdiction to administer medications.
- (2) In order to be licensed as a medication aide in Montana, the applicant shall pass the board approved medication aide exam at 85% proficiency.
- (a) The applicant may retake the examination once if not successful the first time. If not successful on the second try, the applicant must retake and pass the medication aide training program before being eligible to take the examination again.
- (b) The applicant must pass the exam within six months of satisfactorily completing the medication aide training program, or else the applicant must complete the training program again before being eligible to take the exam.
- (3) The application will be kept on file for one year. If the applicant fails to complete the requirements for application within one year, a new application will be required.
- (4) Licenses shall be issued for one-year periods, and shall expire on March 31 of each year.
- (5) In February of each year, the board office will mail all currently licensed medication aides a renewal application which must be completed and returned to the board before April 1, together with the renewal fee.
- (6) Any person practicing as a medication aide without a license or during the time the license is lapsed shall be considered an unlicensed practitioner and may be subject to the penalties provided by law for practicing without a license.

AUTH: 37-1-131, 37-8-202, MCA

IMP: 37-1-131, 37-8-101, 37-8-202, MCA

NEW RULE IV GENERAL REQUIREMENTS FOR MEDICATION AIDE TRAINING PROGRAMS AND INSTRUCTORS (1) The board shall approve medication aide training programs. The program must include the following components:

- (a) "the six rights of medication administration";
- (b) purposes of medications;
- (c) classes of medications;
- (d) allowable routes of administration of medications;
- (e) care, storage and regulation of controlled substances and medications;
 - (f) how to administer medications;
- (g) adverse reactions, side effects and allergies to medications;
 - (h) medication log;
 - (i) medication error reporting;
 - (j) documentation;
 - (k) how and when to report to the supervising nurse; and
 - (1) completion of the board-approved skills checklist.
- (2) The training program shall be no less than 32 hours of didactic classroom presentation, eight hours of simulated practical experience, and 40 hours of direct, supervised clinical experience.
- (3) The training program must assure an instructor to student ratio of no less than one instructor to five students in the clinical practice setting and one instructor to 10 students in the clinical laboratory setting. The supervised clinical experience shall be obtained under the direction of a nurse with an unencumbered Montana license, and who need not be the board-approved instructor.
- (4) The board-approved examination shall be given at the board office. If travel to the board office presents a hardship, the board office will attempt to make alternate arrangements with the applicant's local job service office.
- (5) The board shall approve instructors for medication aide training programs. The training program instructor must:
 - (a) be a nurse with an unencumbered Montana license;
- (b) have at least two years of nursing experience in the last five years, one year of which shall be in long term care, home health, hospice, assisted living or other community based setting or be a state certified nursing assistant instructor; and
- (c) have a working knowledge of assisted living facility rules and regulations.

AUTH: 37-1-131, 37-8-202, MCA

IMP: 37-8-101, 37-8-202, 37-8-422, MCA

6. Concerned persons may present their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to the Board of

Nursing, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or by email to dlibsdnur@state.mt.us, and must be received no later than 5:00 p.m., July 9, 2004.

- 7. An electronic copy of this Notice of Public Hearing is available through the Department's and Board's site on the World Wide Web at http://www.discoveringmontana.com/dli/nur. The Department strives to make the electronic copy of this Notice of Public Hearing conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the Department strives to keep its website accessible at all times, concerned persons should be aware that the website may be unavailable during some periods, due to system maintenance or technical problems, and that a person's technical difficulties in accessing or posting to the e-mail address do not excuse late submission of comments.
- 8. The Board of Nursing maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this Board. Persons who wish to have their name added to the list shall make a written request that includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding all Board of Nursing administrative rulemaking proceedings or other administrative proceedings. Such written request may be mailed or delivered to the Board of Nursing, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, faxed to the office at (406) 841-2305, e-mailed to dlibsdnur@state.mt.us, or may be made by completing a request form at any rules hearing held by the agency.
- 9. The bill sponsor notice requirements of 2-4-302, MCA, apply and have been fulfilled.
- 10. Lorraine Schneider, attorney, has been designated to preside over and conduct this hearing.

BOARD OF NURSING KIM POWELL, RN, CHAIRMAN

/s/ WENDY J. KEATING
Wendy J. Keating, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

/s/ DARCEE L. MOE
Darcee L. Moe
Alternate Rule Reviewer

Certified to the Secretary of State May 24, 2004.